MUNICIPAL DISTRICT OF RANCHLAND NO. 66
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August 19, 2021

Alberta Coal Policy Committee
(*Submitted Via, Email* energy.coalpolicy@gov.ab.ca.)

Dear Chairman and Committee Members

Re: Municipal District of Ranchland No. 66 ("Ranchland")
Submission to the Coal Policy Committee (CPC) of the Government of Alberta (GOA)

EXECUTIVE SUMMARY

The coal debate began in Ranchland and It is here that the most controversial coal developments were proceeding therefore there is good reason that Ranchland is at the heart of this issue.

Our intention is to address two broad topics:

1) how should coal development be regulated in Alberta and
2) what should a new coal policy include? Those topics will be discussed in the following headings:

1. Involving Municipalities in Green Zone Coal Development proposal decisions;
2. Requiring the Alberta Energy Regulator (the "AER") to broaden the scope of their environmental considerations;
3. Prohibiting coal development in the South Saskatchewan River Basin;
4. Removing politics from coal development and the AER;
5. Requiring notice for new approval applications;
6. Accessing regions already subject to coal development;
7. Requiring bonds for exploration approvals; and
8. Taxing coal.

The submission represents the opinions of the Council of the Municipal District of Ranchland No.66 and its residents. They are provided to the Coal Policy Committee so that it can assist the GOA with developing "a twenty-first century natural resource

development policy”[1]. Each of these topics are logical and are supported by science and history. It is our hope that the CPC and the Minister of Energy will take them seriously as creditability of a process, is paramount to gaining the trust of Albertans, failure will only feed the atmosphere of skepticism of the AER and any regulatory processes the GOA puts in place.

Yours Truly

Council of the Municipal District of Ranchland No. 66

[1] Terms of Reference.

Council of the Municipal District of Ranchland No. 66

Submission to the Albert Coal Policy Committee

August 19, 2021

Introduction

The coal debate began in Ranchland. It is here that the most controversial coal developments were proceeding.

It is with good reason that Ranchland became the heart of this issue.

Ranchland is marked by unparalleled beauty which has sustained ranchers for over 100 years. It is a pristine and largely undeveloped corner of our province. Ranchland is also the playground for a large population of Albertans seeking recreation activities from the urban areas of Calgary and Southern Albertans. The oil and gas industry are also a significant player in Ranchland along with hydro transmission and pipelines that support the provincial and national economy.

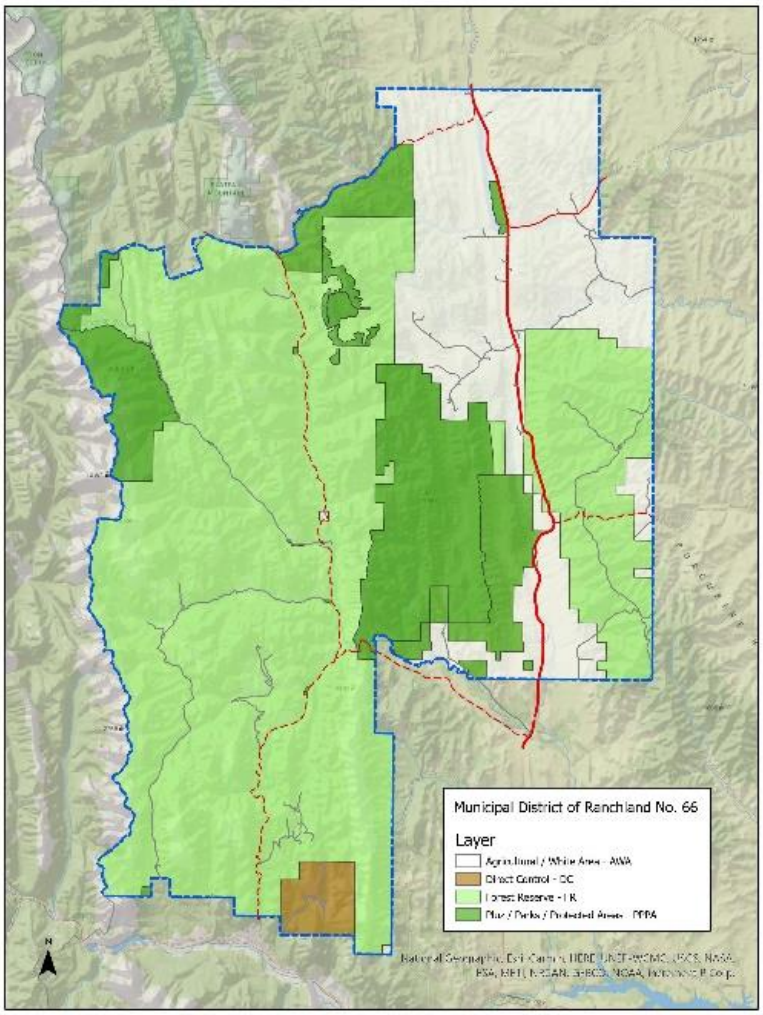
For generations, our residents have sought to protect and preserve the land that have provided their livelihoods. Ranching is the foundation of our residents' way of life, and they have practiced it—and continue to practice it—sustainably.

Our residents' commitment to our environment is derived from both economic necessity and a deep respect for our land and community. They desire to see their ranching operations pass on to future generations and they recognize that this is only possible if the land upon which those operations are based is sustained.

These principles form the bedrock of Ranchland's governance. Our Municipal Development Plan (MDP) *Land Use Bylaw* (LUB)sets out that:

> The purpose of this Ranchland is to conserve agricultural lands, including grassland, while accommodating land use activities which are compatible with the prevailing agricultural pursuits on privately held lands or leased lands in the white area of the municipality.

Likewise, our MDP establishes that our community's history is the reason for our environmental stewardship:



Nestled in the Rocky Mountains and rolling foothills of southern Alberta, the Municipal District of Ranchland No. 66 includes some of the finest ranching country in Canada. Located in the southwestern portion of the province, Ranchland's boundaries stretch north to Kananaskis Country, south to the border of the Crowsnest Pass, west to the British Columbian border and east to the ranch lands west of Willow Creek. The area possesses outstanding forestry, wildlife, and grazing resources, in addition to some of the most important watersheds in Alberta. Administered by the Department of Municipal Affairs since the early 1900s as an Improvement District, and the community of Ranchland seized the opportunity provided by the GoA to incorporate and become a self-governing municipality in 1995. As part of the transformation from an Improvement District to a Municipal District, Ranchland was required to develop a series of new policies, procedures, and bylaws.

In a proactive effort to pursue its vision of preserving and promoting their unique ranching heritage, Ranchland Council initiated the preparation of this MDP to further reinforce the Community's vision for land use goals and objectives as defined in the LUB.

Ranchland thinks ahead. We are proactive and we plan for the future. We need to take the long view because our communities' way of life depends on our land stewardship and a forward-thinking mindset.

These submissions reflect that stewardship and forward-thinking mindset. They are our community's opinion on coal development now and in the future.

Our intention is to address two broad topics: 1) how should coal development be regulated in Alberta and 2) what should a new coal policy include? Those topics will be discussed in the following headings:

1. Involving municipalities in green zone coal development proposal decisions;
2. Requiring the Alberta Energy Regulator (the "AER") to broaden the scope of their environmental considerations;
3. Prohibiting coal development in the South Saskatchewan River basin;
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5. Requiring notice for new approval applications;
6. Accessing regions already subject to coal development;
7. Requiring bonds for exploration approvals; and
8. Taxing coal.

Items #3, #6 and #8 relate to a new coal policy. The remaining items relate to how coal development is regulated. These submissions will also include a short outline of Ranchland's opinion on the Coal Policy Committee's jurisdiction.

Each section will contain background explaining the problem followed by a proposal for how to solve the problem.

We appreciate the opportunity to make these submissions and to present our vision to the CPC.

1. Involving Municipalities in Coal Development

Background

Although Ranchland would have filed statements of concern with the AER, we weren't aware of the applications for proposed exploration programs in 2019 or earlier. The first Ranchland became aware was in 2020, after permits to explore had already been granted and in some cases the exploration work was completed.

Ranchland took the opportunity to make submissions to the AER on two applications for coal exploration programs.[2] The first was CEP200001 granted to Cabin Ridge Project Limited on September 25, 2020 and the second was CEP200002 granted to Elan Coal Ltd. on September 10, 2020.[3]

[2] The statement of concern filed by Ranchland in CEP200001 is attached as Schedule "A". the statement of concern filed in CEP200002 is identical.

[3] CEP200001 and CEP200002 are each attached to these submissions as Schedule "B".

Ranchland filed a statement of concern with respect to both coal exploration approvals. The statements of concern mirrored each other because our concerns with both approvals were the same. The first concern raised by Ranchland in both statements of concern related to the approval's compliance with Ranchland's bylaws including the *Municipal Development Plan* and the *Land Use Bylaw*.

In granting each of CEP200001 and CEP200002, the AER disregarded Ranchland's legislative framework with a single sentence:

> In relation to the Ranchland's concern about this CEP interfering with its mandate to pursue development in accordance with its land use bylaw, AER approvals prevail over municipal bylaws pursuant to section 619 of the *Municipal Government Act (MGA)*.

There was no consideration given to Ranchland's planning framework beyond the AER's bare statement that section 619 of the MGA permits the AER approval to take precedence over municipal bylaws.

It is no wonder that Albertans are skeptical about the regulatory process. Our bylaws are adopted after significant public consultation. Public hearings are required for each planning bylaw adopted by a municipality, and those public hearings are strictly regulated by the *MGA*:

> Planning bylaws
>
> 692(1) Before giving second reading to
>
> (a) a proposed bylaw to adopt an intermunicipal development plan,
>
> (b) a proposed bylaw to adopt a municipal development plan,
>
> (c) a proposed bylaw to adopt an area structure plan,
>
> (d) a proposed bylaw to adopt an area redevelopment plan,
>
> (e) a proposed land use bylaw, or
>
> (f) a proposed bylaw amending a statutory plan or land use bylaw referred to in clauses (a) to (e),
>
> a Council must hold a public hearing with respect to the proposed bylaw in accordance with section 230 after giving notice of it in accordance with section 606.

Municipalities play a significant role in the lives of Albertans. They are required to plan for the future and to develop strategies for development. At odds with that approach is the AER's ability to run roughshod over and disregard long term municipal planning.

Proposal

Ranchland's long term mindset planning and land stewardship extends into the Green Zone even though the primary landholder and manager is the GOA. Ranchland plays a critical role in assisting the GOA in meeting it's own management goals for those same lands both in well-established roles like enforcing the Weed Control Act, Emergency Services, road network and bridges, and less tangible services supplied to help the GOA in maintaining habitat integrity and limit cumulative effects from human footprint. Some examples are community and disposition holders support to management efforts to protect the environment, riparian management programs, support to GOA operational field staff, support to recreational planning for the area, consultation for all the area land management plans, weed control assessment resources and tracking programs, and much more.

Municipalities need to be considered and involved in decisions around coal development and there are precedents to follow. The most relevant precedent is the *Agricultural Operation Practices Act* ("***AOPA***").

Like coal mining and exploration approvals, in order to receive an approval under *AOPA* parties must apply to an approval officer. That approval officer is required to reject an application if it is inconsistent with a municipal development plan:

> Considerations on approvals
>
> 20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,
>
> > (a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, or
> >
> > (b) there is no inconsistency with the municipal development plan land use provisions and the requirements are met or a variance may be granted under section 17 and compliance with the variance meets the requirements of the regulations, the approval officer
> >
> > > (i) must consider matters that would normally be considered if a development permit were being issued…
>
> [emphasis added]

Approval officers appointed under *AOPA* are also required to consider a municipality's land use bylaw. If an application does not comply with a municipal development plan, the approval officer "must deny the application".

Applicants may appeal to the Natural Resources Conservation Board (the "**NRCB**"). *AOPA* sets out the items the NRCB is required to consider:

> 25(4) In conducting a review the Board
>
> …
>
> (g) must have regard to, but is not bound by, the municipal development plan…

The NRCB must consider a municipal development plan but, unlike an approval officer, the NRCB is not bound by it.

Ranchland submits that this is the approach that ought to be followed with regulatory approvals for coal projects. It recognizes the importance municipalities have in the lives of Albertans and will prevent future approvals from ignoring municipal planning, as occurred in CEP200001 and CEP200002.

Applying this approach to the AER is consistent with the *Responsible Energy Development Act* ("***REDA***") and the *Coal Conservation Act* ("***CCA***"). Like under *AOPA*, the AER has a two-step appeal process. Further, like the AER, the NRCB has the same powers under section 619 of the *MGA*:

> *619(1) A license, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC prevails, in accordance with this section, over any statutory plan, land use bylaw, subdivision decision or development decision by a subdivision authority, development authority, subdivision and development appeal board, or the Land and Property Rights Tribunal or any other authorization under this Part.*

Unlike the AER, however, the NRCB "must have regard to" a municipal development plan. It cannot disregard that municipal development plan like the AER did in CEP200001 and CEP200002. The AER should have the same requirements imposed upon it as the NRCB is subject to.

2. Requiring the AER to Consider Environmental Issues

Background

In the statements of concern filed in both CEP 200001 and CEP200002, Ranchland raised two concerns that were not considered by the AER: 1) the approvals pertained to

habitat for threatened and endangered species and 2) the approvals had a cumulative effect with other activities and approvals.

Again, the AER failed to consider either issue:

> The CEP impacts are localized and temporary in nature. The letter of authority is issued for a five (5) year term; two (2) years for operations and three (3) years for reclamation.
>
> With respect to the Ranchland's concerns about wildlife, Elan is required to adhere to all timeline restrictions imposed in the Mountain Goat and Bighorn Sheep Zone, the Grizzly Bear Zone, and the Key Wildlife and Diversity Zones.

As it pertained to cumulative effects, the AER only considered the effect of the Approval being applied for. Remarkably, even though the decisions are identical for both CEP200001 and CEP200002 and the decisions were issued 15 days apart, the AER did not consider the cumulative effects of both approvals upon the same landscape.

Coal mining has a significant impact upon the landscape. Cumulative effects of that impact need to be considered with each approval, regardless of whether the approval is for a coal mine or an exploration permit.

Both CEP200001 and CEP200002 are located upon critical habitat for two threatened species: the Westslope cutthroat trout and the bull trout. Both species have recovery strategies under the *Species at Risk Act*. Those recovery strategies have identified critical habitat that will be subject to CEP200001 and CEP200002.

The recovery strategies also set out a list of activities likely to destroy critical habitat. The list includes water extraction, mechanical forest removal, linear disturbances, mining and off-highway vehicle use. Each activity is contemplated in CEP200001 and CEP200002.

Section 58 of the *Species at Risk Act* sets out a prohibition on the destruction of any critical habitat for an aquatic species:

> Destruction of critical habitat
>
> 58(1) Subject to this section, no person shall destroy any part of the critical habitat of any listed endangered species or of any listed threatened species—or of any listed extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada— if
>
> …
>
> (b) the listed species is an aquatic species;

No consideration was given to the critical habitat designation for or the presence of either the Westslope cutthroat trout or the bull trout, nor was any consideration given to cumulative effects.

That the approvals were granted without consideration for species at risk, the other approvals or other land uses is difficult to reconcile. For our residents to trust the AER and the regulatory processes, the AER cannot ignore these factors.

Proposal

Ranchland proposes that, like the requirement to consider a municipal development permit, the AER be required to consider cumulative effects and species at risk. That requirement ought to be legislated under both *REDA* and the *CCA*.

Section 3 of the *Responsible Energy Development Act General Regulation* sets out the factors the AER is required to consider in determining an application for an approval:

> Factors to consider on applications, etc.
>
> 3 For the purposes of section 15 of the Act, where the Regulator is to consider an application or to conduct a regulatory appeal, reconsideration or inquiry in respect of an energy resource activity under an energy resource enactment, the Regulator shall consider
>
> (a) the social and economic effects of the energy resource activity,
>
> (b) the effects of the energy resource activity on the environment, and
>
> (c) the impacts on a landowner as a result of the use of the land on which the energy resource activity is or will be located.

Ranchland submits that two items ought to be added to section 3 of the regulation and that those two items relate directly to approvals for coal development.

First, the AER shall consider whether an activity will impact a species listed under the *Species at Risk Act* and any critical habitat related to that species. Although the AER is required to consider the "environment", the AER's ability to ignore species at risk when issuing CEP200001 and CEP200002 demonstrates that it requires more direction.

Second, the AER shall consider the cumulative impacts of the approval in conjunction with current and future land uses, including recreational, economic or development uses or other approvals either applied for or granted. The linear footprint of resource development, temporary or otherwise, shall not be excluded from contributing to the habitat and species threshold limits in any cumulative effects studies, recreation planning, or land planning while the disturbance exists.

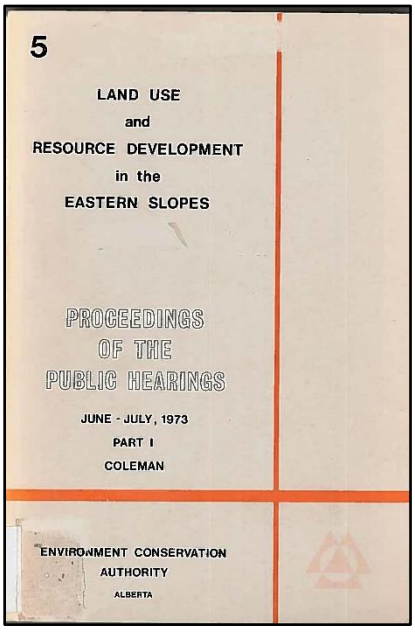
Requiring the AER to consider these two factors will curtail the AER's ability to ignore them.

3. Prohibiting Coal Development in the South Saskatchewan River Basin

Background

In the early 1970s, the GOA began a four-year period of consultation and study on development in the Eastern Slopes. The consultations were conducted by the Environment Conservation Authority (the "**Authority**") and were done to identify the priorities and concerns of Albertans for the region.

One of the Authority's earliest acts was to develop a method by which resources were to be managed by the GOA in the Eastern Slopes Region.



To accomplish its mandate, the Authority began public consultations in 1973 to identify the priorities and concerns of Albertans for the region. The consultations were titled *Land Use and Development in the Eastern Slopes* (the "**Hearings**").

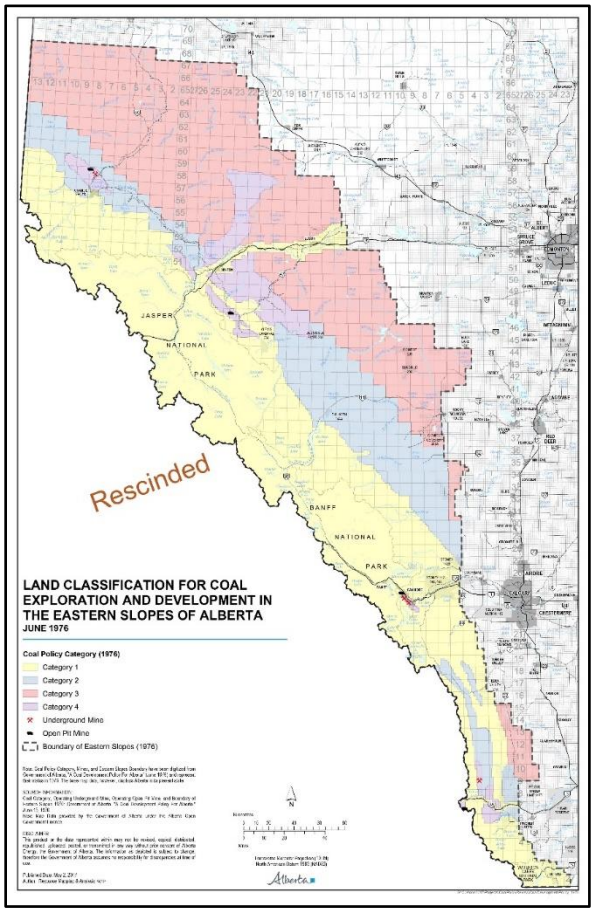
The Hearings were transcribed and are available for review in a ten-volume series. Each volume in the series represents a unique location in which the hearings were held. For example, Part I in the series is the record of hearings in Coleman, Alberta conducted June 11 and 12, 1973. Part II and Part IIIB also relate to the South Saskatchewan River basin.

The Authority heard from a variety of constituents, including first nations, coal development proponents, environmental NGOs and ranchers. It received written and oral submissions from those groups and persons interested in development along the Eastern Slopes. At the commencement of the record of proceedings, the Authority noted as follows:

> *…land in the Eastern Slopes is now used or is proposed for use for such purposes as tourism, urban development, forest utilization, mineral resources industries, surface mining, oil and gas development, underground coal mining, agriculture, watershed conservation, domestic water supplies, hydroelectric power developments, wildlife and fishing management, wilderness and natural areas, institutional use by charitable, religious and other groups, archaeological sites, research, Indian reservations and national and provincial parks.*
>
> …

> In order to publicly explore these interests and discover the concerns they generate; the Environment Conservation Authority was requested on behalf of the GOA to hold comprehensive and wide-ranging hearings on land Use and Resource Development in the Eastern Slopes.
>
> …
>
> A total of 308 submissions was made as well as 14 commercial recreational proposals.

Although the scope assigned to the Hearings is itself notable, it is significant that the same issues considered by the Hearings remain issues today. For example, almost every submission to the Authority in 1973 related to water allocation and loss of native grasses. Those same two factors are driving many submissions before the Coal Policy Committee today.



The 1976 Coal Policy was released following the 1973 hearings. The hallmark of the policy is the coal categories that establish where coal development can take place.

Much has been said about the relevance of the 1976 Coal Policy. The Coal Association of Canada, Cabin Ridge Project Limited and Atrum Coal have all argued that the policy is no longer relevant and out of date. That is not the case.

First, the undeniable fact is that before the policy was rescinded, there was no coal development in categories 1 and 2 lands. That was because the policy was relied upon by the AER in *Directive 061: How to Apply for Government Approval of Coal Projects in Alberta*. The coal categories were incorporated into Directive 061 and governed the AER approval process by which coal projects were approved within the four regions.

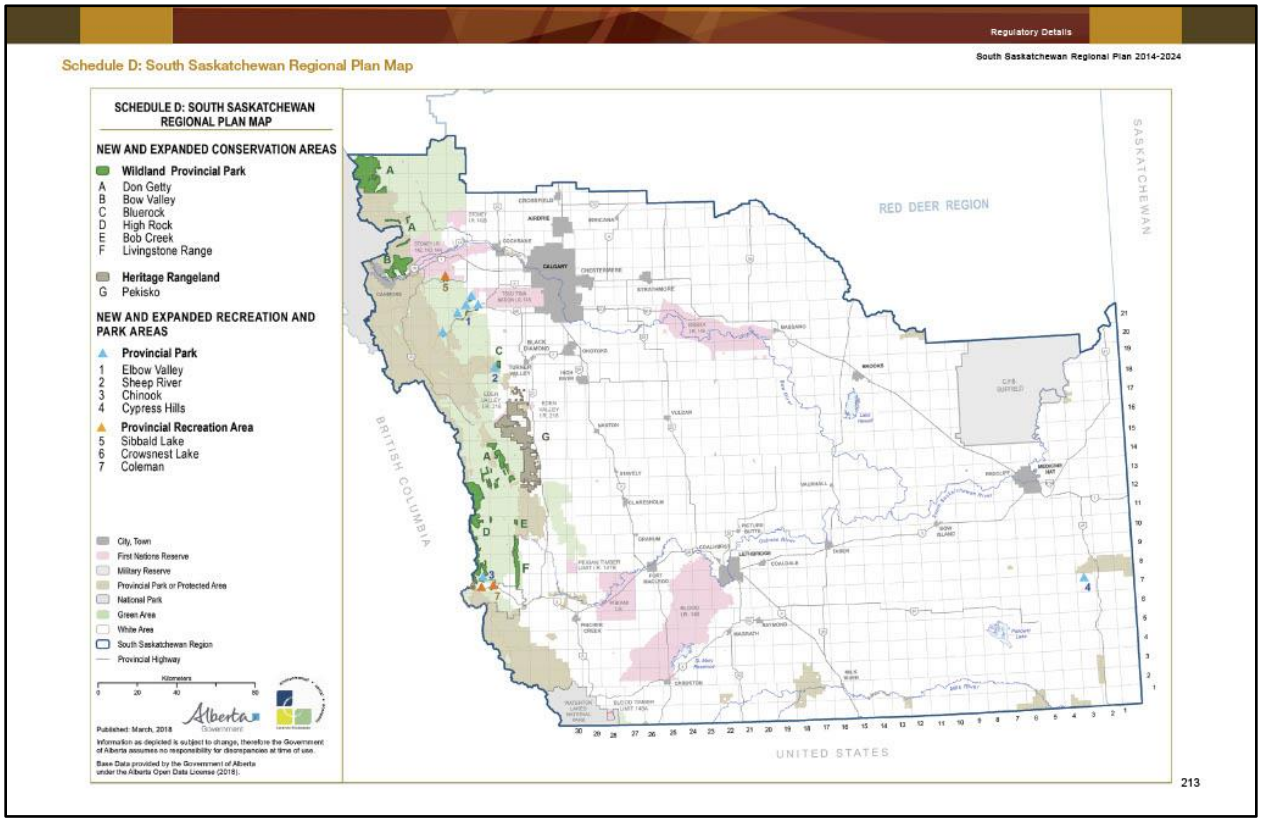
On March 31, 2020, the Minister of Alberta Energy rescinded the 1976 Coal Policy.[4] Nine days later, on April 8, 2020, the AER rescinded Directive 061.

The second reason the 1976 Coal Policy remains relevant is because the concerns that drove the policy remain concerns today. Wildlife, water, the environment all remain the chief concerns of Albertans interested in how coal is developed in the future.

Ranchland is focused on Southwestern Alberta. That is where our municipal district is located and that is the area of concern for our residents. The area of specific concern is the South Saskatchewan River basin.

Proposal

Any new coal policy should prohibit any coal related activities in the headwaters of the entire South Saskatchewan River Basin. The South Saskatchewan River basin is defined in Schedule "C" to the South Saskatchewan Regional Plan.



The reason that coal activities should be prohibited in the South Saskatchewan River basin is threefold:

[4] The rescission was first announced May 15, 2020 and was made effective June 1, 2020. However, the rescission was actually signed by the Minister of Energy on March 31, 2020.

a. Lack of Water Resources;
b. Conflict with current uses; and
c. Biodiversity and environmental concerns.

a) Lack of Water Resources

There is a dearth of water supply in the South Saskatchewan River basin. It is scarce throughout Ranchland and the basin generally. The South Saskatchewan Regional Plan noted how vulnerable the basin is to water pressure:

> Scientific studies indicate that severe droughts have occurred during the past 2,000 years, with an average duration of more than 10 years. At least 20 short droughts occurred during the twentieth century, including a 10-year dry period starting in 1977. The drought of the 1930s is one of the most notable and was the most severe and prolonged drought since the beginning of western settlement. On a provincial scale the 2001-2002 drought had the driest back-to-back years in 74 years.

The South Saskatchewan Regional Plan notes that the basin is overallocated, 75% of which is allocated to agriculture. In their article, *Water for Coal Developments: Where Will it Come From?*[5], Professor Nigel Banks and Cheryl Bradley consider the over-allocation of water resources in the South Saskatchewan River Basin:

> *…water in the South Saskatchewan River Basin (SSRB) – and especially within the Oldman River Basin – is in short supply. Indeed, the SSRB (with the exception of the Red Deer Basin) has long been considered to be over-allocated in terms of licensed appropriations and accordingly it (outside the Red Deer Basin) has been closed to new license applications since 2007 (with some exceptions discussed below). In closing the basin, the [Government of Alberta] was giving effect to the terms of the approved Water Management Plan for the South Saskatchewan River Basin (SSRB WMP). The WMP stated the rationale for this decision as follows (at 7):*

It has been determined during preparation of this plan that the limits for water allocations have been reached or exceeded in the Bow, Oldman and South Saskatchewan River sub basins and flow regimes have been altered by water diversions. This has created risks for both water users and the aquatic environment. In drier years lower priority licenses are not able to receive their total allocation. Existing diversions have also adversely affected the aquatic environment including the riparian vegetation, in the Bow, Oldman and South Saskatchewan River sub basins. Increased withdrawals of water within

[5] https://ablawg.ca/2020/12/04/water-for-coal-developments-where-will-it-come-from/

existing licenses further degrade aquatic ecosystem health. Issuing more licenses compounds these adverse aquatic effects and increases risk to existing licenses.

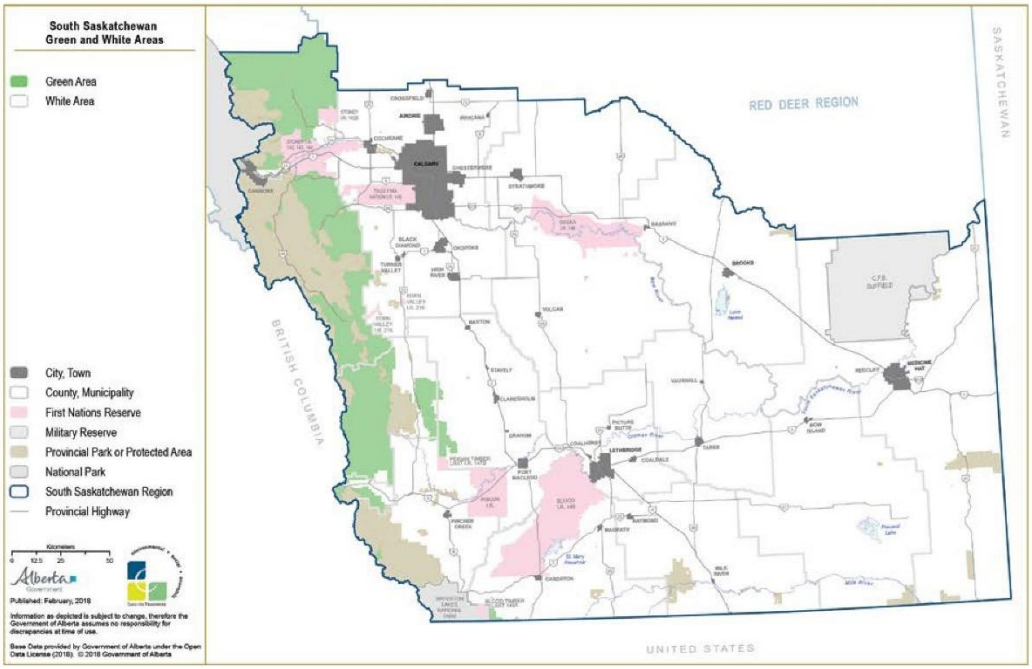
The GOA gave effect to the closure through the adoption of the Bow, Oldman and South Saskatchewan River Basin Water Allocation Order, Alta Reg 171/2007 (BOSS Allocation Order) under the terms of section 35 of the *Water Act*, RSA 2000, c W-3…That said, unless and until amended, the Basin is closed to new allocations except in accordance with the terms of the BOSS Allocation Order. The Department of Environment and Parks has given effect to this by rejecting new applications that cannot bring themselves within one of the exceptions established by the Order. The Environmental Appeal Board has confirmed that practice…The GoA has recently reaffirmed this position in its Water Allocation Policy for Closed River Basins in the South Saskatchewan River Basin Directive (September 2016) which provides that "This Directive affirms the government's expectation since the approval of the Plan by Cabinet in April 2006 that applications for any new water withdrawals from the closed sub-basins will not be considered unless the applications fit within the specific exceptions in the "Regulation".

Our residents require water. Our ranchers require water. Farmers and other agricultural users require water. Aquatic species require water. Recreational users require water. The problem is that there is not enough of it in the South Saskatchewan River basin making it a precious commodity. There is no capacity for coal development in this region considering over allocation and the very serious risk of heavy metal contamination at source in the headwaters.

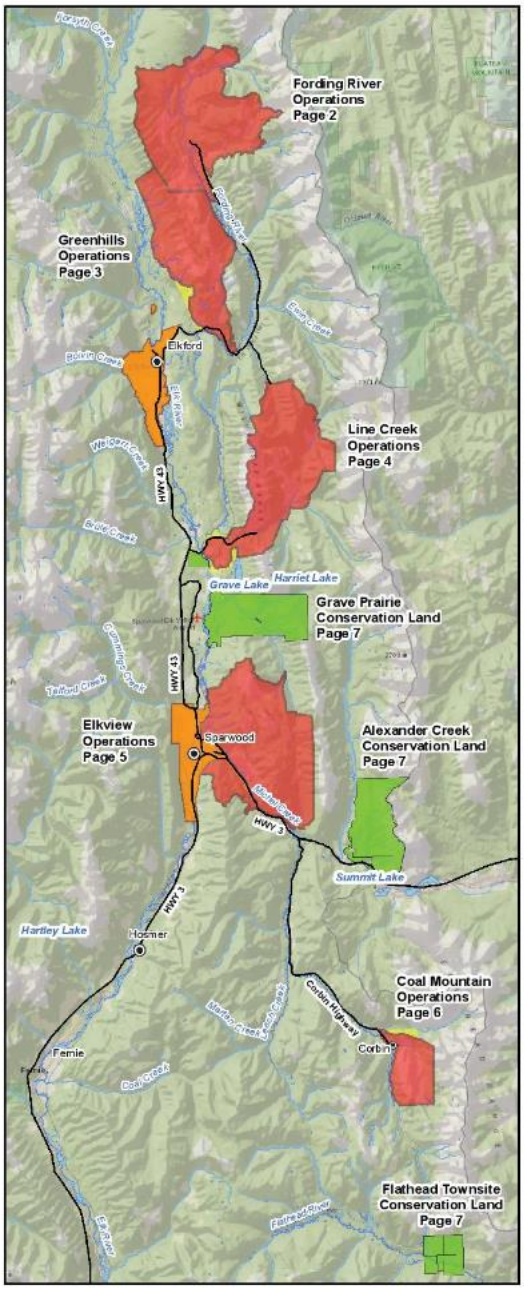
b) Conflict with Current Uses

Except for portions of the Eastern Slopes, the South Saskatchewan River basin is settled land. The portion of the Eastern Slopes that is unsettled is the most environmentally pristine land left in Southern Alberta.

Map 4: Green and White Areas



Open pit coal development is extremely intensive. It takes a lot of land to operate an open pit coal mine. For example, consider the mines operated by Teck Resources in the Elk Valley directly across the British Columbia border from Ranchland.



This is a map released by TECK which outlines the areas of its activity that are closed off to general access by members of the public as a result of the coal mine. More details related to this map are available online in the published document *Teck Access Boundaries in the Elk Valley 2019- 20*[6].

The red zones on the map are the locations where entry is prohibited. Prohibited entry includes recreational holders. As it pertains to the Elkview Operations, the prohibition extends up to the border of the Town of Sparwood, which appears in orange.

There is a significant amount of land required for open pit coal mining and coal exploration. In consideration of the green and white zones in the South Saskatchewan River basin, there is little room for coal development. Any coal development would have a significant disruptive effect on current land users.

In the white zone, coal development would displace agricultural users and property owners.

The green zones in the South Saskatchewan River basin are limited. Coal development in those zones would remove large tracts of land for disposition holders (grazing and forestry), recreational users and property owners.

In Ranchland, the users most effected would be ranchers, disposition holders (grazing and forestry), property owners and recreational users. Significant portions of land within Ranchland's jurisdiction would be needed to accommodate any coal development.

[6] https://www.teck.com/media/2019-2020-Elk-Valley-Access-Maps.pdf

c. Environmental Concerns

Multiple submissions have outlined the environmental concerns associated with open pit coal development. Instead of repeating those submissions, Ranchland wishes to cite paragraph 1351 of the Joint Review Panel's decision in *Benga Mining Limited Grassy Mountain Coal Project*:

> *[1351] We assess the cumulative effects of the project, along with previous and other reasonably anticipated impacts on [Westslope cutthroat trout ("WSCT")] and its aquatic habitat, to be as follows:*
>
> *• Magnitude: high. The cumulative effects will jeopardize recovery of WSCT due to the combined effects of critical habitat loss, changes in stream flows, alteration of water quality (particularly through increased selenium concentrations), reduced habitat suitability, likely precipitation of calcite, reduction in sediment supply, and changes in stream temperatures. These changes are cumulative and synergistic and are likely to cause a detectable change (and potentially extirpation) in WSCT populations in Gold and Blairmore Creeks beyond natural variation, given the known sensitivities of WSCT.*
>
> *• Geographic extent: provincial. While most effects are local or regional, the cumulative effects are likely to jeopardize recovery of WSCT at the provincial scale, and result in the local reduction or extirpation of WSCT populations in Gold and Blairmore Creek.*
>
> *• Frequency: continuous. Cumulative impacts on water quality, alteration of flows, impacts on sediment supply, and changes to instream temperatures are all continuous and cumulatively likely to permanently alter habitat suitability in Gold and Blairmore Creeks, jeopardizing the recovery of WSCT populations.*
>
> *• Duration: persistent. Cumulative impacts on water quality, alteration of flows, impacts on sediment supply, and changes to instream temperatures will persist after the closure and reclamation of the mine, permanently altering habitat suitability in Gold and Blairmore Creeks and jeopardizing recovery of WSCT populations.*
>
> *• Reversibility: irreversible. Cumulative impacts on water quality, alteration of flows, impacts on sediment supply, and changes to instream temperatures are likely to be irreversible in a meaningful timeframe for the recovery of WSCT in Gold and Blairmore Creeks, jeopardizing the recovery of WSCT populations. We consider this effect irreversible given the timeframe required for conditions to return to background (decades) and the Gold and Blairmore Creek populations of WSCT being on the low-end of long-term population viability.*
>
> *• Ecological and social context: negative. WSCT in the project area are listed as threatened under SARA and the provincial Wildlife Act.*

The negative impacts outlined in paragraph 1351 relate only to aquatic habitats. The Joint Review Panel found similarly negative and irreversible impacts on landscapes, terrain and wildlife.

Ranchland was a participant/intervenor and led evidence, both lay and expert, cross examined the applicant and made argument before the Grassy Mountain Joint Review Panel. It did so because it had a strong belief that the Grassy Mountain project was not in the best interest of our community.

The proposed Grassy Mountain project is emblematic of the coal projects being considered in Ranchland. The project involved removing the topsoil and vegetation from Grassy Mountain to expose the limestone cap rock. Once exposed, the project would dismantle and remove the cap rock using explosives. Finally, Grassy Mountain would be replaced with a large open pit.

Open pit coal mines do not belong in the South Saskatchewan River Basin. This is neither the place, nor the time for this type of development. There is no ability to reclaim the resulting stain upon our landscape.

4. Removing politics from coal development and the Alberta Energy Regulator

Background

Politics need to be taken out of future decisions on coal development.

Rescinding the 1976 Coal Policy was inherently a decision driven by the vested interests of coal mining proponents. Much can be said about the suspicious timing of the rescission—the Friday of a long weekend during the pandemic shutdown—and much can be said about who was and was not consulted.

After the policy was rescinded, Ranchland residents and ranchers filed an Originating Application in the Court of Queen's Bench seeking judicial review of the decision. Ranchland applied to be an intervenor in that judicial review.

We know that project proponents advocated for rescission of the 1976 Coal Policy because of the evidence that was obtained in the course of the judicial review. On December 21, 2020 the witness produced by Alberta Energy was cross examined. He provided the following testimony (as summarized)[7]:

- The coal industry sought the 1976 coal policy rescission by Alberta Energy;

[7] Mr. Moroskat's Questioning Transcript was filed in Court of Queen's Bench Action No. 2001-08938 on January 6, 2021 and is available upon request.

- Alberta Energy understood that rescission would be viewed positively the coal industry;
- Alberta Energy met “fairly regularly” with coal industry proponents over the course of “multiple meetings with multiple companies on a variety of different subjects”; and
- Rescinding the 1976 Coal Policy “would've come up in these discussions”.

The meetings did not happen in view of public discourse. They happened behind closed doors.

Meetings were not offered to others. Alberta Energy’s witness testified that the ranchers who brought the judicial review application were not consulted, nor was Ranchland, environmental groups or First Nation representatives.

There are two reasons that coal proponents sought out Alberta Energy:

a) The 1976 Coal Policy was never adopted as legislation; and
b) Section 67 of *REDA* allows the Minister of Energy to issue directives to the Alberta Energy Regulator (the “**AER**”).

Proposal

a) Adopting the Coal Policy as Legislation

In order to remove politics, the next coal policy needs to be legally binding. In this regard, Ranchland supports and repeats the submissions to the Coal Policy Committee authored by Professor Nigel Banks, *A New Coal Policy for Alberta in the Age of Net Zero: Questions of Implementation*[8].

In addition to Professor Banks’s submissions, Ranchland proposes that any changes to the new coal policy should undergo the same process as changes to a regional plan adopted under the *Alberta Land Stewardship Act*:

> 5 Before a regional plan is made or amended, the Stewardship Minister must
>
> (a) ensure that appropriate public consultation with respect to the proposed regional plan or amendment has been carried out, and present a report of the findings of such consultation to the Executive Council, and
>
> (b) lay before the Legislative Assembly the proposed regional plan or amendment.

[8] Those submissions are attached to these as Schedule “C”.

Requiring consultation and approval by the Legislature before implementing changes to the new coal policy will remove political interference with a new coal policy.

b) Section 67 of REDA

Section 67 of *REDA* grants the Minister of Energy the ability to interfere in the AER's operations:

> 67(1) When the Minister considers it to be appropriate to do so, the Minister may by order give directions to the Regulator for the purposes of
>
> > (a) providing priorities and guidelines for the Regulator to follow in the carrying out of its powers, duties and functions, and
> >
> > (b) ensuring the work of the Regulator is consistent with the programs, policies and work of the Government in respect of energy resource development, public land management, environmental management and water management.
>
> (2) The Regulator shall, within the time period set out in the order, comply with directions given under this section

It is through section 67 of *REDA* that the 1976 Coal Policy and Directive 061 were rescinded. Since it was rescinded, the Minister of Energy used section 67 to restore the 1976 Coal Policy (Ministerial Order 054-2021), prohibit new approvals (Ministerial Order 054-2021) and suspend existing approvals (Ministerial Order 093-2021).

We know that section 67 was used by Alberta Energy to direct the AER to rescind the 1976 Coal Policy. Again, during cross examination, Alberta Energy's witness noted that he immediately notified the AER by telephone once the decision was made to rescind the 1976 Coal Policy.

If the new coal policy is not legally binding, then section 67 of *REDA* needs to be repealed. The Minister's ability to direct and influence the AER using section 67 or otherwise cannot continue if Albertans are to trust the regulatory process.

5. Requiring Notice for New Approval Applications

Background

Every municipality in Alberta is mandated and encouraged to collaborate and work together with neighboring municipalities, both urban and rural, to avoid duplication and conflict when considering developments. For example, municipalities are mandated to prepare intermunicipal development plans and to inform neighbors of development proposals near their boundaries even though they are operating within their jurisdiction

and within their rights to manage their own development decisions. These plans are often contentious and require considerable resources and time to complete and update. The process, however, is valuable

It is not unreasonable, for GOA authorities to be required to at least inform the municipalities of development proposals, including proposals that involve crown land, like the forestry or “green zone” within a municipality’s boundary or close proximity to a boundary.

In failing to provide notice, provincial authorities destroy all the good will they are trying to cultivate by deciding to not inform or consult municipalities when development proposals are received. As it stands, the only way a municipality would be aware of a coal proposal within the green zone, is to be made aware of it by the party making the proposal, by the public, or by consistently monitoring a regulator’s website and trying to determine if applications were happening near or within a municipality.

Previous to 2013, Ranchland had no experience with the coal industry, coal exploration programs or the AER’s coal regulation. Since 2013, the municipality has experienced an opaque, unclear process, obscured by jurisdictional bureaucracy and pre-set to allow relatively free rein for coal exploration programs.

This relative free rein for the industry was demonstrated over and over. First with the rescission of Alberta’s coal policy opening millions of acres of formerly protected lands to exploration and removing the policy that the AER used as a directive on where coal development was permitted. Thrown out with the policy was the original intent of the protections from coal mining in watersheds integral to southern Alberta’s sustainability, the promises by the GOA to take back private mineral rights in protected category 1 lands.

Immediately following the rescission, several new speculative mining companies were formed, the AER’s coal manual was rescinded and same day coal exploration permits were granted by the AER in critical habitat lands, in watersheds containing species at risk and, in at least one case, without the consent of the other disposition holders on the same lands in direct contravention of the AER’s own rules.

Ranchland found out about the coal exploration program when ranchers with grazing dispositions started questioning the MD as to why there were new roads being built all over the ridges within their dispositions. There was no consultation, no notification and no window for expression of concerns for disposition holders, municipalities or concerned Albertans.

This process of same day approvals for coal exploration on sensitive lands within Ranchland happened with at least three different coal exploration company programs.

These programs represent hundreds of kilometers of new roads, about 1,650 drilling pads with many servicing up to five wells, and numerous stream crossings.

On June 2, 2020, one day after the 1976 Coal Policy rescission became effective, the AER granted approval CEP190006 to Montem Resources Alberta Operations Ltd. ("Montem"). The approval granted Montem the ability to conduct exploration over a large tract of land in Ranchland.

Ranchland received no notice of Montem's application.

Ranchland was made aware that Montem was conducting exploration in Ranchland's jurisdiction when residents advised Ranchland that the exploration was occurring. Our understanding is that those residents did not receive notice of the application either.

Under *REDA*, an applicant is only required to provide public notice of an application:

> *31 The Regulator shall on receiving an application ensure that public notice of the application is provided in accordance with the rules.*

Public notice is only required to be provided as follows:

> *5.1 For the purpose of section 31 of the Act, public notice of an application may be provided by any of the following methods:*
>
> > *(a) posting notice of the application on the Regulator's website;*
> >
> > *(b) publishing notice of the application in one or more issues of a newspaper that has daily or weekly circulation in the area of the Province to which the application relates;*
> >
> > *(c) providing notice of the application through a telecommunication system or electronic medium;*
> >
> > *(d) making available a copy of the application in one or more offices of the Regulator in the area of the Province to which the application relates;*
> >
> > *(e) delivering notice of the application to any person determined by the Regulator;*
> >
> > *(f) any other method the Regulator decides is appropriate.*

Trusting a regulatory process requires knowledge that the process is happening. Albertans will only trust the regulatory process if directly affected parties and municipalities are provided with prior notice of approval applications.

Proposal

Ranchland proposes a notice requirement similar to an Alberta Utility Commission application. In brief, a notice requirement for an overhead transmission line requires:

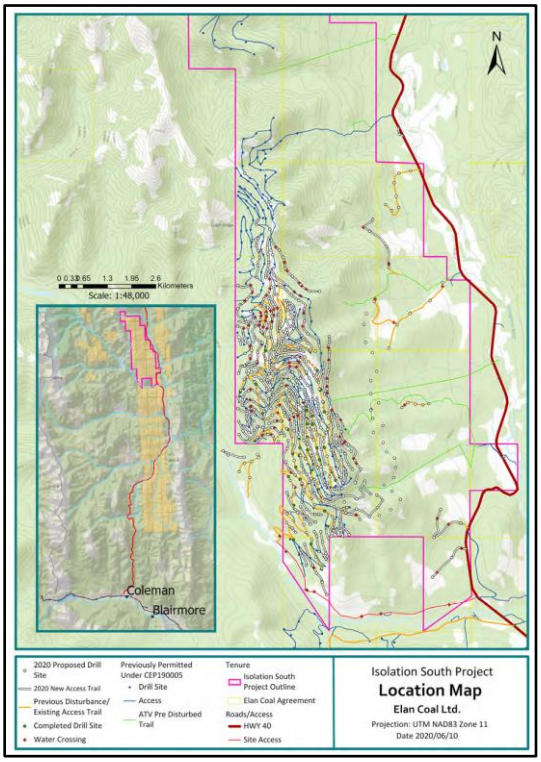
> Public notification to occupants, residents and landowners within 800 meters measured from the edge of the proposed right-of-way for the transmission line and/or the edge of the proposed substation site boundary. and:
>
> Personal consultation with occupants, residents and landowners on or directly adjacent to the proposed right-of-way for the transmission line and/or proposed substation site location.[9]

Notice of an open pit coal mine or of coal exploration should be no different than notice of a new transmission line. Arguably, the impact of an open pit coal mine is more substantial than the impact of a transmission line.

Ranchland proposes that notice of coal development or exploration be provided to all residents, occupants, landowners, municipalities and disposition holders within 15 km of the proposed activity by the AER (instead of the proponent or applicant). This requirement would be in addition to the current requirement of public notice.

6. Access after Exploration

Background



Since 2019, coal development in Ranchland has centered primarily around exploration. The development has opened a vast expanse of wilderness that saw minimal human activity before coal exploration. By inserting cut lines, access trails and roadways into what was previously dense forest, recreational and other users are now able to access large portions of Ranchland for the first time.

Although access to public land is a short-term benefit to recreationalists, it brings added pressure to the environment and disposition holders. The potential for increased conflict with disposition holders is a concern for Ranchland.

Off highway vehicle (OHV) use, hunting and camping are all activities that are widely permitted on public land. New trails cut lines and pathways may lead to an increase in these activities.

[9] Alberta Utilities Commission, Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines.

Proposal

Land use planning is required to consider the impact of recent coal activity. The process used to establish Castle Provincial Park and confirm OHV access in Bob's Creek Wildland Park needs to occur in the lands opened following coal exploration. Of concern to Ranchland is public access to Porcupine Hills and the forest reserve North of highway #3.

Policies requiring access management need to be adopted and required following any exploration or other types of coal development. Ranchland has experienced the failings of access management, and the examples from other areas of Alberta where access management has worked successfully need to be emulated here.

The Coal Policy Committee ought to recommend further mandatory land use planning after coal development. There are two mechanisms by which further land use planning can occur:

1. The new Coal Policy could include consideration for post coal recreation and other access, such as limiting OHV and other vehicle use on cut lines; or
2. The Coal Policy Committee may recommend the establishment of additional sub regional plans under the *South Saskatchewan Regional Plan* and the *Alberta Land Stewardship Act* to deal with this issue.

7. Requiring Bonds for Exploration Approvals

Background

The *Coal Conservation Rules* require project proponents to post a performance bond as follows:

> *82(1) The Regulator may, when considering an application under the Act or these Rules to assure compliance with the Act and these Rules, require the applicant to deposit with the Regulator a security in an amount not exceeding*
>
> > *(a) $500 per hectare of land directly affected by the proposed development if that land is within the Plains Region, or*
> >
> > *(b) $2500 per hectare of land directly affected by the proposed development if that land is in the Foothills or Mountain Regions.*

As far as Ranchland is aware, no performance bond was required for CEP190006, CEP200001 or CEP200002.

The level of reclamation required is also unspecified. Much of the reclamation required is discretionary upon the AER.[10]

[10] See, for example, section 3 of the *Coal Conservation Rules* and section 12 of the *CCA*.

Proposal

Ranchland submits that reclamation ought to be properly defined in the *CCA* and *REDA*. It is only through properly defining reclamation that the AER will know the appropriate bond amount.

Ranchland further submits that the performance bond be raised to reflect actual costs related to the proposed activity. Under the current bond structure, coal proponents would only be required to post $2,500 to reclaim a hectare of land in Ranchland. Given the pristine nature of our jurisdiction, $2,500 is insufficient to properly reclaim land disturbed by coal mining. The cost of any shortfall would thereby be borne by the GOA and/or Ranchland.

A performance bond should also be a condition of obtaining an exploration approval. Exploration requires significant disruption to the landscape, including linear disturbances, watercourse crossing damage, disruption to other disposition holders and users, introduction to invasive species and weeds, expansion into habitat areas leading to access management challenges.

8. Taxing Coal

Background

There appear to be two sources from which GOA receives coal royalties:

1) royalties obtained pursuant to lease agreements between lessees and the GOA and

2) royalties obtained through the *Coal Royalty Regulation*.

A significant amount of coal development occurs in minerals that are held by private entities—they are not owned by the Province of Alberta. In those freehold minerals, Alberta is unable to obtain royalties through lease agreements. Significantly, private ownership is dominant in the coal producing regions of Southwestern Alberta, as indicated by the above map.

In brief, the *Coal Royalty Regulation* applies a 1% royalty to bituminous coal and a $2/tonne royalty to subbituminous coal. This royalty would apply regardless of whether the Province of Alberta is the lessor.

The predominant form of coal mining in the Eastern Slopes is bituminous coal.

Proposal

Given the volume of coal development on privately owned mineral rights, the 1% royalty scheme is insignificant to properly compensate the Province of Alberta for the environmental harm attributable to coal development. To put it another way, 1% is insufficient compensation for an open pit coal mine that involves scraping off the top of a mountain and replacing it with an open pit while adding significant amounts of Selenium to the South Saskatchewan River watershed.

Ranchland proposes to the GOA to significantly raise the royalty rate on bituminous coal to properly compensate Albertans for the environmental harm attributed to coal development. Ranchland suggests that a commission be struck to recommend a coal royalty that properly considers the negative impact of coal development on the environment and society.

The new royalty scheme ought to be included in the new coal policy. The 1976 Coal Policy, for example, set out the original royalty scheme.

a) Freely Held Mineral Rights

Ranchland notes the considerable amount of freely held mineral rights within the Eastern Slopes generally and its jurisdiction specifically. The only method to completely ensure protection from coal development is for the Province of Alberta to hold mineral rights.

Ranchland does not have a proposal to require this; it simply raises the issue as a point of concern for the Government of Alberta to consider.

8. The Coal Policy Committee's Jurisdiction

The CPC mandate is set out in its Terms of Reference. Ranchland's view is that the committee's mandate is broadly defined and includes areas related to the environment and water resources.

The Terms of Reference define the committee's purpose as follows:

> *The purpose of the Committee is to conduct engagement as necessary to prepare a report to the Minister on the advice and perspectives of Albertans about the management of coal resources in connection with matters under the Minister's administration, including:*
>
> - *Mines and Minerals Act, relating to coal tenure and royalty;*
> - *Coal Conservation Act, relating to resource management and conservation; and*
> - *Responsible Energy Development Act, relating to regulatory oversight of responsible coal development.*

REDA sets out that the AER's authority includes jurisdiction over water and the environment:

(s) "specified enactment" means

(i) the Environmental Protection and Enhancement Act,

(ii) the Public Lands Act,

(iii) the Water Act,

(iv) Part 8 of the Mines and Minerals Act,

(v) a regulation under an enactment referred to in subclauses (i) to (iv), or

(vi) any enactment prescribed by the regulations.

25 Except to the extent that the regulations provide otherwise, an application, decision, or other matter under a specified enactment in respect of an energy resource activity must be considered, heard, reviewed or appealed, as the case may be, in accordance with this Act and the regulations and rules instead of in accordance with the specified enactment.

This CPC's jurisdiction is to provide a report to the Minister of Energy on "matters under the Minister's administration". The Minister's administration includes the AER and the AER has primary jurisdiction over environment and water regulation. It is for this reason that Ranchland submits that the Coal Policy Committee may hear and consider matters relating to the environment and water.

Conclusion

These submissions represent the opinions of Ranchland and its residents. They are provided to the CPC so that it can assist the GOA with developing "a twenty-first century natural resource development policy"[11].

The recommendations included herein reflect the direct experience of Ranchland. Our jurisdiction has been subject to significant coal activities since the 1976 Coal Policy was rescinded. Those impacts include linear disturbances, new roadways, vegetation removal and habitat destruction. The impacts have directly affected our residents whose grazing leases and private property have been subject to coal exploration.

Ranchland and its residents want to have confidence in the regulatory processes. That confidence, however, will only come if two issues are engaged:

1) a new coal policy that properly reflects the concerns of Albertans and

[11] Terms of Reference.

2) a significantly altered regulatory framework is implemented.

On the first issue, the new coal policy should prohibit coal development in the South Saskatchewan River basin. The reasons for prohibiting development are obvious and have been the subject of submissions to the Coal Policy Committee.

Coal Mining Activity in Elk Valley, British Columbia

A new Coal Policy needs to consider how Albertans will access lands accessible following coal development. The advent of cut lines roadways and pathways in previously untouched public land needs to be considered by the committee and inserted into a new coal policy.

The new coal policy also needs to develop a taxation framework that properly rewards and supports Albertans and municipalities. The framework developed in the new coal policy needs a significant overhaul from the current framework.

On the second issue, the current regulatory framework does not work. The AER has full discretion to ignore crucial issues that arise as a result of coal development, including negative impacts on species at risk, lack of compliance with municipal land use planning and the cumulative effects of additional development. Each of these factors were disregarded by the AER in its decisions to grant CEP190006, CEP200001 and CEP200002.

Project proponents are similarly able to limit opposition to coal development by limiting who receives notice of coal development. In the case of CEP190006, Ranchland is unaware whether anyone directly affected by the exploration approval was provided notice of or filed a statement of concern with the AER.

Finally, the bonds required for coal development need to be revised and extended to exploration approvals. Proper costing of reclamation needs to occur so that Albertans are not bound to the liabilities and impacts of coal development and exploration.

Each of these submissions are logical. They are supported by science and history and our hope is that the CPC and the Minister of Energy will take them seriously, failing which Albertans will continue to view the AER and regulatory processes with significant skepticism.

We thank you, the CPC for considering our submissions in its report to the Minister of Energy.

Yours Truly,

_____

Ron Davis, Reeve
M.D. of Ranchland No. 66